IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04/11/2004

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THE HON'ABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'ABLE MR.JUSTICE T.V.MASILAMANI

W.A.No.105 of 2001

1. The Superintending Engineer
(Civil) Hydro Project
T.N.E.B., Urachikottai
Bhavani, Periyar district.

2. The Superintending Engineer
Salem Electricity Distribution
Circle, Venkatrao Road, Salem.

3. The Assistant Executive Engineer
Material Management Salem
Electricity Distribution Circle
Salem-1. .. Appellants

-Vs-

S.Sivamani .. Respondent

PRAYER: Appeal under Clause 15 of the Letters Patent against the order of His Lordship, Hon'ble Mr.Justice Y.Venkatachalam dated 9.8.2000 passed in W.P.No.17778 of 1993.

!For Appellants : Mr.V.Radhakrishnan

^For Respondent : Mr.N.Paul Vasanthakumar

:JUDGMENT
(Judgment of this Court was made by P.D.DINAKARAN,J.)

The appellants (hereinafter referred to as "the Board") are the respondents in W.P.No.17778 of 1993 filed by the respondent herein (hereinafter referred to as "the employee") challenging the order dated 21.6.1993, whereunder the Board proposed to recover a sum of Rs.26,628.30 towards the loss sustained by the Board, due to the neglect of work found to have been committed by the employee in a disciplinary action initiated against him pursuant to the charge memo dated 18.7.1989.

2. Concededly, two charges were framed against the employee in the departmental enquiry, viz.,
(i) that he committed a misconduct of neglect of work attracting Tamil Nadu Electricity Board Standing Order 19(ix) with respect to the workmen engaged in Clerical department of the Board, as he failed to verify the stock of explosives in the stores till 20.4.1989; and
(ii) that he committed a misconduct of having stolen explosives, viz., (a) Superdyne 600 Kgs; and (b) Electric Detonators 4500 Nos, which were entrusted to him as a custodian of the stores, attracting Standing Order 19(i) and 19(iii) of the workmen engaged in the clerical department of the Board.

3. After due enquiry, the enquiry officer in his report dated 18.12.1989 found that the first charge referred to above was proved however, the second charge was not proved. Pursuant to the said enquiry report dated 18.12.1989, a punishment was imposed on the employee awarding stoppage of one increment without cumulative effect and thereafter, by a notice dated 21.6.1993, which is impugned in the writ petition, the Board proposed to recover a sum of Rs.26,628.30 from the employee towards the loss sustained by the Board and the same was challenged by the employee in W.P.No.17778 of 1993, on two grounds, viz.,
(i) that he had already suffered a punishment of stoppage of increment without cumulative effect with respect to the impugned disciplinary action and therefore, the impugned recovery proceedings amounts to double jeopardy; and
(ii) that he had not been issued any show cause notice before initiating the impugned recovery proceedings.

4. The writ petition was resisted by the Board on the ground that in view of the finding of the enquiry officer that the employee had committed a neglect of work attracting Tamil Nadu Electricity Board Standing Order 19(ix) with respect to the workmen engaged in Clerical department of the Board, which has become final, and the consequential punishment imposed on the employee there is no necessity to issue a fresh show cause notice. It was also contended on behalf of the Board that the impugned recovery proceedings having been initiated to recover the loss sustained by the Board cannot be construed as a double punishment.

5. The learned Single Judge, by order dated 9.8.2000, while rejecting the contention of the Board, accepted the case of the employee and quashed the impugned recovery proceedings. Hence the above writ appeal.

6. Both the learned counsel for the Board and the learned counsel for the employee reiterated the submissions that were made before the learned single Judge.

7. We have given our careful consideration to the submissions of both sides.

8. It is a settled law that when a disciplinary action is initiated and the charges were held proved, the management is empowered to recover the loss sustained by them irrespective of the punishment imposed for the misconduct proved and such recovery proceedings in our considered opinion

cannot be construed as double jeopardy. However, in the instant case, no show cause notice was issued to the employee before arriving at the quantum of loss sustained by the Board, even though the Standing Orders are silent in this aspect.

9. It is trite law that the employee is entitled to have a notice before the employer comes to the conclusion as to (i) the quantum of recovery proposed to be made; and (ii) the procedure of recovery to be adopted. This becomes irresistible to the instant case, as even in the charge memo dated 18.7.1989, the Board had observed that there was a loss of Rs.20,000/- only, but in the impugned recovery proceedings dated 21.6.1993, the Board proposed to recover a sum of Rs.26,628.30 . Therefore, the impugned recovery could not be proceeded with automatically based on the findings of the enquiry officer and the finality reached pursuant to the charge memo dated 18.7.1989, as contended by the learned counsel appearing for the Board, unless a show cause notice is given to the employee in this regard, giving him an opportunity to submit his explanation before arriving at the quantum and also before recovering the amount quantified as loss.

10. We are, therefore, of the considered opinion, that the impugned recovery proceedings dated 21.6.1993 is not sustainable in law. Hence, we set aside the impugned recovery proceedings dated 21.6.1993, of course giving liberty to the Board to proceed in accordance with law, if they are so advised, and as and when such proceedings are initiated, the employee is entitled to defend his case, which shall be disposed in accordance with law.

This writ appeal is disposed of accordingly. No costs.

Index : Yes
Internet : Yes

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